

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 15769 of 2004

Between:

M/s. Coastal Spice Multi Cuisine Restaurant, Rep. by V.R. Mohan Rao, S/o. Ranga Rao, aged 53 Years, R/o. 6-3-883/4/1/A, Panjagutta, Hyderabad.

..... PETITIONER

AND

- 1 Municipal Corporation of Hyderabad, Rep. by its Commissioner, Tank Bund, Hyderabad.
- 2 The Additional Commissioner, M.C.H., East Zone, Abids, Hyderabad.
- 3 The Advertisement Officer, M.C.H., (Advertisement Section), Tank Bund, Hyderabad.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ Order or Direction more particularly one in the nature of WRIT OF MANDAMUS, to declare the impugned notice dt. 17-4-2004 vide No. 2647/AI/EZ/Advct./MCH/2002-2003 issued by the 3rd respondent as illegal, arbitrary, contrary to Law and violative of Article 19(1)(g) of the Constitution of India and consequently set aside the same.

Counsel for the Petitioner: MR.VOOSA.RAGHU

Counsel for the Respondents: MR.RAMA RAO GANTA, Standing Counsel for Municipal Corporation of Hyderabad

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.15769 OF 2004

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ORDER:

M/s. Coastal spice Multi Cuisine Restaurant, Panjagutta in Hyderabad represented by its proprietor, assails the notice dated 17.04.2004 issued by Municipal Corporation of Hyderabad (MCH), whereby and whereunder the petitioner was asked to apply in Form-I for regularization of advertisements by making payment of requisite advertisement fee of Rs.12,500/- (Rupees twelve thousand five hundred only). The petitioner assails the same only on the ground that the name board of the restaurant, which is displayed within the premises of petitioner restaurant, cannot be treated as an advertisement attracting the provisions of Section 421 of Hyderabad Municipal Corporation Act, 1955 (the HMC Act, for brevity).

The petitioner obtained trading licence from MCH in 2002, which was renewed for the year 2004-05. He has erected the name board to guide the customers to find location of the restaurant, allegedly within the premises. He alleges that he has not displayed/exhibited any advertisement near the restaurant and therefore MCH is not entitled to levy advertisement tax.

At the time of admission, the learned Standing Counsel Sri Ganta Rama Rao submits that the petitioner has displayed illuminated neon signboard and therefore the board displayed by the petitioner attracts advertisement tax. He placed reliance on Section 421 of the HMC Act as well as the decision of this Court in **Asian Paints India Limited v Additional Commissioner (Finance), MCH**. Learned counsel for the petitioner Sri Voosa Raghu submits that though the petitioner has displayed illuminated board, as the same is within the petitioner's premises, the petitioner is

not liable to pay any advertisement tax.

Section 421 of HMC Act reads as under:

421. Regulation and control of advertisements:

(1) No person shall without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure:

Provided always that such permission shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which-

- a. is exhibited within the window of any building;
- b. relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same or to the trade or business carried on by the owner of any vehicle upon which such advertisement is exhibited.;
- c. relates to the business of any railway administration;
- d. is exhibited within any railway station or upon any wall or other property of a railway administration except portion of the surface of such wall or property fronting any street.

(2) Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section upon any land, building, wall, hoarding or structure save and except as permitted or exempted from permission as hereinbefore provided, the owner of person in occupation of such land, building, wall, hoarding or structure shall be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this section after the written permission for the erection, exhibition, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon which the same is erected, exhibited, fixed or retained, to take down or remove such advertisement.

(4) (a) The word "structure" in this section shall include a tramcar, omnibus and any other vehicle and any movable board used primarily as an advertisement or an advertising medium; and

(b) the expression "illuminated advertisement" in this section shall not include an illuminated display of goods if such display –

- i. is of goods merely bearing labels showing the name of the article or of its

manufacturer or of both; and

- ii. is made by lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night.

Interpreting Section 421 of the HMC Act, this Court in **Asian Paints Case** (supra) held as under:

7. The submission, I am afraid, is wholly misconceived. As per the proviso to sub-section (1) of Section 421, the following advertisements can be erected, depicted or fixed without the written permission of the Commissioner;

(i) an advertisement which is exhibited within the window of any building;

(ii) an advertisement which relates to the trade or business carried on within the land or building upon which such advertisement is exhibited;

(iii) an advertisement which relates to the business of any railway administration;

(iv) an advertisement which is exhibited within the railway station or upon the property of railway administration;

8. The proviso further says that the exemption granted by it shall not extend to any of the above categories of advertisement if the advertisement is illuminated one or which is a sky-sign. Clause (b) of sub-section (4) lays down that the expression 'illuminated advertisement' shall not include an illuminated display of goods if such display is of goods 'clearly bearing label showing the name of the article or of its manufacturer or both and such illuminated display is made by lighting which is not more than necessary in the opinion of the Commissioner.

10. It is not denied that the petitioner company is supplying illuminated boards and that the respondent has issued a notice deciding that the illuminated advertisement boards of the petitioner come within the purview of Section 421 of the Act. This only shows that in the opinion of the Commissioner, as per sub-clause (ii) of clause (b) of sub-section (4) of Section 421 of the Act, the 'illuminated advertisement boards of the petitioner company are more than necessary' and therefore, they are non-excluded category of advertisements attracting rigour of sub-section (1) of Section 421. It has, therefore, to be held that the impugned notice cannot be held to be illegal on that ground.

In the present case, even assuming that the petitioner has displayed name board within the premises, as the same is illuminated, it is governed by sub-section (1) of Section 421 of the HMC Act and the petitioner is liable to pay advertisement fee. The petitioner has already made a representation and the said representation may be considered by the Commissioner of Municipal Corporation of Hyderabad. In this writ petition, no relief can be granted.

The Writ Petition, with the above observation, is dismissed.

(V.V.S.RAO,J)

07.09.2004.

pln

To

1. The Commissioner, Municipal Corporation of Hyderabad, Tank Bund, Hyderabad.
2. The Additional Commissioner, M.C.H., East Zone, Aids, Hyderabad.
3. The Advertisement Officer, M.C.H., (Advertisement Section), Tank Bund, Hyderabad.
4. 2 CD copies.